

Date: August 12, 1991

To: Home Health Agencies

HHA 13

From: Larry Tainter, Director
Bureau of Quality Assurance

Subject: Final Rule – Health Care Financing – 42 CFR Part 484
Home Health Agencies: Conditions of Participation

Attached is the final rule and requirements for home health agencies (HHA) participating in the Medicare program. The provisions of this rule are effective on August 19, 1991.

Please note that the responses in BQC memorandum 91-051 (HHA12), dated July 31, 1991, were related to the requirements in effect prior to the receipt of the final rule.

We have identified the following significant new and/or revised areas of the new requirements. Please carefully review the new requirements for all other changes.

1. All references to “inservice”, “speech pathologist”, and “therapist assistant” throughout part 484 of 42 CFR, are revised to read “in-service”, “speech-language pathologist”, and “therapy-assistant”.
2. “Home health aide” personnel qualifications have been expanded to include “personal care attendants” who are employed by HHAs exclusively to furnish personal care attendant services under a Medicaid personal care benefit. An individual may furnish personal care services, as defined in 440.170, on behalf of an HHA after the individual has been found competent by the state to furnish those services for which a competency evaluation is required by paragraph 42 CFR 484.36(b) and which the individual is required to perform. The individual need not be determined competent in those services listed in 42 CFR 484.36(a) that the individual is not required to furnish.

Example: The HHA only requires the personal care attendant to provide for a safe clean home environment. The personal care attendant would then have to demonstrate competence in that specific area identified in 42 CFR 484.36(a)(vi).

Example: The HHA only requires the personal care attendant to participate in the provision of tub, sponge or shower baths. The personal care attendant would have to demonstrate competence in the areas of tub, sponge and shower baths identified in 42 CFR 484.36(a)(ix).

The HHA should be aware that the circumstances of each situation will dictate other areas of personal care attendant competency that must also be addressed. These areas include, but are not limited to, skin care, hair care, nail care, ambulation and safe transfer techniques, recognition of emergencies and knowledge of emergency procedures, communication skills and client rights.

If an employee is functioning only as a personal care attendant, s/he is exempted from the nurse assistant/home health aide registry requirements.

3. The HHA must advise the patient orally, and in writing, of any changes in the information provided, in 42 CFR 484.10(e)1 (patient liability), as soon as possible, but no later than 30 calendar days from the date the HHA becomes aware of a change. The previous requirement was “15 working days”.

4. The language “to act in the absence of the administrator” has been added to 42 CFR 484.14(c). This section now reads, in part, “A qualified person is authorized in writing to act in the absence of the administrator.”
5. HHAs that were not allowed to provide home health aide training, because one or more of the conditions of participation were out of compliance within 24 months before the training was to begin, may begin training again unless they were out of compliance with the requirements of 42 CFR 484.36(a) or (b) within the previous two years. The new requirements indicate that a home health aide training program may be offered by any organization except an HHA that within the previous two years has been found:
 - (a) Out of compliance with requirements of 42 CFR 484.36(a) or (b);
 - (b) To permit an individual who does not meet the definition of “home health aide” as specified in 42 CFR 484.4 to furnish home health aide services (with the exception of licensed health professionals and volunteers);
 - (c) Has been subject to an extended (or partial extended) survey as a result of having been found to have furnished substandard care (or for other reasons at the discretion of the HCFA or the State);
 - (d) Has been assessed a civil monetary penalty of not less than \$5,000 as an intermediate sanction;
 - (e) Has been found to have compliance deficiencies that endanger the health and safety of the HHA’s patients and has had a temporary management appointed to oversee the management of the HHA;
 - (f) Has had all or part of its Medicare payments suspended; or
 - (g) Under any federal or state law within the 2-year period beginning on October 1, 1988:
 - (1) Has had its participation in the Medicare program terminated;
 - (2) Has been assessed a penalty of not less than \$5,000 for deficiencies in federal or state standards for HHAs;
 - (3) Was subject to a suspension of Medicare payments to which it otherwise would have been entitled;
 - (4) Had operated under a temporary management that was appointed to oversee the operation of the HHA and to ensure the health and safety of the HHA’s patients; or
 - (5) Was closed or had its residents transferred by the state.
6. The home health aide must receive at least 12 hours of in-services training per calendar year. The previous requirement regarding home health aide in-service training was “at least 3 hours per calendar quarter”.
7. A home health aide competency evaluation program may be offered by any organization except an HHA that within the previous two years has been found:
 - (a) Out of compliance with requirements of 42 CFR 484.36(a) or (b);
 - (b) To permit an individual who does not meet the definition of “home health aide” as specified in 42 CFR 484.4 to furnish home health aide services (with the exception of licensed health professionals and volunteers);
 - (c) Has been subject to an extended (or partial extended) survey as a result of having been found to have furnished substandard care (or for other reasons at the discretion of the HCFA or the State);

- (d) Has been assessed a civil monetary penalty of not less than \$5,000 as an intermediate sanction;
- (e) Has been found to have compliance deficiencies that endanger the health and safety of the HHA's patients and has had a temporary management appointed to oversee the management of the HHA;
- (f) Has had all or part of its Medicare payments suspended; or
- (g) Under any federal or state law within the 2-year period beginning on October 1, 1988:
 - (1) Has had its participation in the Medicare program terminated;
 - (2) Has been assessed a penalty of not less than \$5,000 for deficiencies in federal or state standards for HHAs;
 - (3) Was subject to a suspension of Medicare payments to which it otherwise would have been entitled;
 - (4) Had operated under a temporary management that was appointed to oversee the operation of the HHA and to ensure the health and safety of the HHA's patients; or
 - (5) Was closed or had its residents transferred by the state.

6. The in-service training may be offered by any organization.

7. The in-service training generally must be supervised by a registered nurse who possesses a minimum of 2 years or nursing experience at least 1 year of which must be in the provision of home health care. The previous requirement included "and who has supervised home health aide services for at least 6 months". This portion of the requirement has been eliminated in the new requirements.

8. The HHA must provide the preparation necessary for the individual to successfully complete the competency evaluation program. After August 14, 1990, the HHA may use only those aides who have been found to be competent in accordance with 42 CFR 484.36(b).

9. The requirements regarding the Standard of Supervision, under 42 CFR 484.36(d), have been added and/or revised. This section now reads:

"The following requirements for supervision of home health aides furnishing home health aide services to patients must be met:

- (1) Home health aide services only. When only home health aide services are being furnished to a patient, a registered nurse must make a supervisory visit to the patient's resident at least once every 60 days. Each supervisory visit must occur when the aide is furnishing patient care.
- (2) Skilled nursing care or physical, speech, or occupational therapy furnished. When skilled nursing care or physical, speech, or occupational therapy are also being furnished to a patient, a registered nurse must make a supervisory visit to the patient's residence at least every 2 weeks (either when the aide is present to observe and assist, or when the aide is absent) to assess relationships and determine whether goals are being met. When only physical, speech, or occupational therapy are furnished in addition to the home health aide services, a skilled therapist may make the supervisory visits in place of a registered nurse.

(e) Personal care attendant: Evaluation requirements.

- 1.) Applicability. This paragraph applies to individuals who are employed by HHAs exclusively to furnish personal care attendant services under a Medicaid personal care benefit.
- 2.) Rule. An individual may furnish personal care services, as defined in 440.170 of this chapter, on behalf of an HHA after the individual has been found competent by the state to furnish those services for which a competency evaluation is required by paragraph (b) of this section and which the individual is required to perform. The individual need not be determined competent in those services listed in paragraph (a) of this section that the individual is not required to furnish.

If you have any questions regarding the new requirements, please contact Dick Cooperrider, Home Health Survey Supervisor, at (608) 267-7389 or Allan Stegemann, Chief, Facilities Regulation Section at (608) 266-2055.

CHS/jh

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cc:

- BQC Staff
- Office of Legal Counsel
- Wisconsin Homecare Organization
- Wis. Assoc. of Homes and Services for Aging
- Wis. Assn. Nursing Homes
- Wis. Counties Assn.
- Wis. Medical Records Assn. Cons. Committee
- Service Employees International Union Local 150
- Wis. Coalition for Advocacy
- Comm. of Aging, Extended Care Facilities and HH Care
- Ann J. Haney, DOH Admin.
- Kevin Piper, BHCF Director
- Jerry Sandlin, HCFA - Region V
- Illinois State Agency
- Ohio State Agency
- Minnesota State Agency
- Indiana State Agency
- Michigan State Agency
- Bur. of LTS, DCS